UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

ROMAN FINNEGAN, et al.,
Plaintiffs,
vs.) Cause No. 3:08-CV-503
LAUREL MYERS, et al.,
Defendants.

PARTIAL TRANSCRIPT OF JURY TRIAL
OPENING STATEMENTS BY PLAINTIFFS
SEPTEMBER 16, 2015
BEFORE THE HONORABLE RUDY LOZANO
UNITED STATES DISTRICT COURT

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ALSO PRESENT:

Roman Finnegan, Lynette Finnegan, Tabitha Abair, Johnathon Abair, Regina McAninch, Tracy Salyers, Reba James, James Payne, Jennifer McDonald, and Nancy Webb.

(WHEREUPON, proceedings were had and reported, but not made a part of this excerpted record.)

(The following proceedings were held in open court, transcribed as follows:)

OPENING STATEMENT BY MR. WAICUKAUSKI

May it please the Court, ladies and gentlemen of the jury.

As the Judge just explained to you, we now have the opportunity to tell you what we expect the evidence to show, and I've prepared a timeline to review a series of events over several years that are at issue in this case.

During those years that are at issue, the Defendants, Regina McAninch, Laurel Myers, Reba James, Tracy Salyers, and James Payne, all five of them, worked at the Department of Child Services, or DCS. And as a result of their positions in that Department, they were all vested by law with the power to take children from their parents and from their homes and force them to live with strangers in a strange place.

The Defendant Jennifer McDonald is a detective with the Indiana State Police; and as a result of her position, she is and was vested by law with the power to conduct searches, to arrest, to put people in jail, and to press criminal charges against them.

And the seventh and last Defendant, Dr. Antoinette Laskey, is a pediatrician with a subspecialty in child abuse;

and as a result of her position, she had and has the power to give expert medical opinions upon which critical decisions may be made by police officers and DCS employees.

What all seven Defendants have in common is great power. And with great power comes great responsibility, and with that responsibility comes accountability.

You will hear evidence in this case about how all of these Defendants used their power to cause severe hardship and unbearable pain to the five members of the Finnegan family who are Plaintiffs in this case.

Your task will quite simply be to decide whether they exercised that power responsibly or abused it. You will, in effect, decide whether the Defendants are held accountable for their actions.

To understand this conduct, we need to go back 24 years to 1991. In fact, it was almost exactly 24 years ago that Jessica Salyer was born.

And I don't know whether you can read that on that screen, but in the upper left-hand corner you'll see it shows an entry that says: 1991 to 1996, extensive treatments/surgeries at Riley Hospital in Indianapolis.

Jessica Salyer was born 24 years ago this week with a birth defect. She had a heart that was not properly formed completely. One of the valves wasn't working properly, and she was promptly sent to Riley's Children's Hospital in

Indianapolis for treatment by expert cardiologists and heart surgeons there.

And over the next five years, she had two major surgeries, two major open heart surgeries, to treat that heart birth defect, which, in effect, left her with a functioning heart, but it only functioned with two chambers. I didn't know it was possible either, but they have a Fontan procedure that makes that happen.

Jessica Salyer was born to her mother, Lynette. Lynette had two older children, who were healthy and fine, and she made sure, though, that Jessica got the treatment at Riley Children's Hospital in Indianapolis, although it was more than a hundred miles away from her home in Northern Indiana.

She did it over five years with numerous treatments, numerous hospitalizations, and then in 1996 the last operation was done. The second Fontan procedure was done. Jessica's heart, though not completely normal, functioned fine.

But that was not the only problem that Jessica had. Jessica also was born with a seizure disorder. In fact, she was the fourth generation of Lynette's family to have a seizure disorder. Lynette has a seizure disorder.

And during the next few years, Jessica, although her heart was now functioning with two chambers, she had some seizures, and they had to get her seizures under control. But with medications for the seizures and with medications for the

heart, Jessica became an active, healthy, normal child.

The meds were stabilized at a relatively low dose. By the way, I didn't give you that second entry about the seizures and the adjustment of meds.

But then by the years 2000 to 2005, everything was stabilized. She was an active child on low dose meds.

What happened basically during this period from 1991 to 2004 is that, after those initial procedures at Riley and after getting her meds under control, Lynette regularly filled prescriptions and appointments, and we had at that point over a thousand pages of medical records.

But Jessica was doing fine, and all she required as of the period of 2000 to 2005 is to keep her meds up and an annual appointment at Riley. She would have a checkup with a cardiologist there. In 2002, she had her annual checkup. In the reports, you'll see she was doing well, and they said, "We would like to re-evaluate in about one year."

About one year later, Jessica went back. Lynette brought her back for another checkup, in which she was found to be doing, again, quite well, no need for any treatment, just maintain the meds we're on, re-evaluate in one year.

2004, Lynette takes her back the hundred miles or so to Riley for the annual checkup with the cardiologist. The report is, you'll see, she continues to do quite well, would like to see back in one year.

And when I say doing quite well, she's riding bikes, she is playing outside, she is roughhousing with her brother. She's an active, outgoing child. She has some limits in hot weather. She has some limits. She can't play varsity sports. But she is, by all appearances, a normal, active, healthy child. And that's really the way she is going into 2005.

And in 2005, in the second half, that's when -- Wait a minute. I didn't give you those entries there. When this -- The 2002, 2003, and 2004 checkups show there on the left. On the right, we're going to go to the second half of 2005.

I'm going to show you details about the medical attention that Lynette was giving to Jessica during this time period, and I'm showing it to you because later DCS substantiates medical neglect associated with this time period, when the reality is this: In May of 2005, the Finnegan family, which at that point consisted of Lynette and her husband of about a year, Roman Finnegan, stepfather of the four children, and the four children, Johnathon, who in 2005 is about 17. The second child was Tabitha, who at that point is about 16. Jessica is the third child in line, who is 14 in 2005, and then the youngest child is Katelynn, who is 9 years old at the time. That family moves from in the vicinity of Culver, where they've been in school for some period of time. They moved to Francesville, which is a small community in Pulaski County.

They find a house in town not far from a pharmacy,

and it's also not far from where Roman works. He's been a career correctional officer with the Department of Corrections in the Indiana Department of Corrections, and he goes to work for the Medaryville facility of DOC.

And so they move. They get adjusted to new schools. And in June, they start using a pharmacy in Francesville. Lynette gets Jessica's prescription filled.

In July, July 19th in particular, Lynette takes all four children for back-to-school physicals, including Lynette -- excuse me, including Jessica, into the family physician they've been using for a number of years in Knox, Indiana.

The day after that back-to-school physical, she has prescriptions filled in Francesville. She fills more prescriptions on September 2nd.

On September 7th -- Let's go through those -- Let me go back one day there before we talk about September 7th.

On September 6th, DCS receives a call from the school nurse. Jessica and the others are going to school for the first time. Lynette meets with the school nurse and others and explains to the school nurse that Jessica has some medical issues associated with the heart defect at birth, et cetera. Discusses it with the school nurse.

But the school nurse seems to think following that discussion that Jessica needs surgery, that Jessica has had an

appointment with her cardiologist in Indianapolis and failed to show up for that appointment and also seems to think that Jessica doesn't have insurance.

So she calls DCS, reporting those purported facts -- none of them were true -- reporting that. And DCS then calls the Finnegans on the morning -- excuse me, on September 7th. Actually, they call about 1:00 in the afternoon about the concerns expressed by the nurse.

Following that phone call -- Actually, let me just read to you a letter or portions of a letter that Roman wrote to his State representative after this call from Regina McAninch. He wrote:

"Dear Mary Kay Budak: I'm contacting you in regards to a situation my wife and I had today. We received a call from a child protective service worker from Pulaski County in regards to her daughter -- that's Lynette's daughter -- Jessica Salyer. The case worker called and commented to my wife, 'You don't care about your daughter.'"

"When my wife mentioned that she, my wife, has Epileptic seizure, the woman insinuated that my wife was incapable of caring for her daughter. This call was received while we were asleep and not at all prepared for this confrontation, by the way."

During this time frame Roman works a shift that

starts at 4:00 p.m. and ends at midnight Central time. When he comes home from work in the early morning, he's still kind of wound up. He doesn't get to sleep for a while. Lynette gets up early and gets the kids off to school, but then they sleep in during the day. That's their routine. So when they call, they're sleepy; and that's why they're sleeping in during the day, because he essentially works at night.

Roman continues in this letter to his legislator.

Next he reports, "My wife became frustrated and hung up on Ms. McAninch." Then he says next, "I answered the phone, she called back, and introduced myself as Lynette's husband. The caller asked where I worked and if I had insurance. When I attempted to explain the situation, she became accusatory."

A little bit later in the letter he explains, "When I gave the phone back, back to Lynette, the caller rudely proclaimed to my wife that we had a 9:00 appointment on September 9, 2005," that's a day-and-a-half later, "with no regard to our schedule or ability to be present." "This woman," this is in the letter, "has no idea how much added stress and burden she has created for us. She has invaded our privacy and insulted us with her unprofessional demeanor."

He continues, "I also called later that day." This is September 7th, 2005. "I also called the Pulaski office

and talked to the Director, Laurel Myers," who is also a Defendant in this case, "and said" -- and let me get this precise, "that in my 15 years with the Department of Corrections, I've never talked to an offender in the manner that my wife and I have been talked to today. I'm hoping that you can either provide help or intervention. Thank you for your time and consideration. Sincerely, Roman Finnegan."

After he sent that letter, the letter got forwarded to the Governor's office, then got forwarded to the Defendant James Payne, the Director at DCS, and then got forwarded to Laurel Myers, back at the Winamac office of DCS.

Ms. Myers responded to this letter by saying that Ms. McAninch was not in any way rude; and Mr. Payne, after getting feedback from Ms. McAninch and Ms. Myers, responded that the local department had acted -- this is in a letter he wrote to Roman Finnegan, quote, "in a manner consistent with State law and best practice standards." That's what Mr. Payne and Ms. Myers said was appropriate.

Now, they proceeded to continue with the investigation. They had the meeting on Friday, September 9th, and there, Roman Finnegan and Lynette Finnegan explained, one, "I work for the Department of Corrections. I have high quality insurance with Anthem. The notion we don't have insurance is just not true."

They explained that the appointment at Riley that summer, this annual checkup that you should do about then, was canceled by the doctor. There was no no-show. It was canceled by the doctor, and they were getting it rescheduled, once they had gotten settled in and got adjusted to their new environment in Francesville. That all of the reasons for concern being expressed by the nurse were really unjustified.

That's what was exchanged. That's what was learned. They were concerned that the appointment be made. In fact, what happened in the ensuing days was that on the 14th, September 14th, after this meeting on September 9th, Lynette takes Jessica to the family doctor, Dr. Bartush, in Knox, for blood work to prepare for the meeting with Dr. Hurwitz, the pediatric cardiologist in Indianapolis.

When I say blood work, you're going to hear during the course of this trial a lot about something called an INR test, or an International Normalized Ratio. It's a test to determine the coagulation of blood. When you're on a medication called warfarin or Coumadin -- Coumadin is the brand name. Warfarin is the generic name. It's a drug that thins the blood, that reduces the coagulation level of the blood. And it does so in a non-linear way. You never know with a particular person what the reaction is going to be, so you need to test on some sort of routine basis and particularly whenever you change the dosage to see what the effect is going to be on

the coagulation of that particular person.

So before Lynette took Jessica to see Dr. Hurwitz, she had this done. On September 14th.

The next day, she took Jessica down to Indianapolis. Actually, Lynette, because of her seizures, didn't drive. Most of the driving was done by Roman Finnegan throughout this time period. He's the one that drove her down to Riley.

Had the checkup, and what the checkup revealed was essentially the same thing that had occurred in the prior three years. Jessica was doing, in his words, quite well, said that we should have another re-evaluation in one year. It was just a routine checkup.

He did say that, based on the INR level that was found in the drug test on the day before, or the blood test on the day before, that we should increase the dosage for warfarin or Coumadin from 2.5 milligrams to 3 milligrams, a small dosage, to see if we could get closer to the target that he wanted, which was in the 1.8 to 2.5 range under the units of measure that they were. And she was only at about 1.18 in the test that was done the day before.

So they got a minor adjustment, a small adjustment in the warfarin dosage. With that new adjustment, Lynette got it filled the next day in Francisville with the new prescription.

There was also a rash or something that looked like flea bites that Jessica had over a period of time, and they

requested and received a consult with the dermatology department at Riley, and Jessica went back on September 29th to have that done in Indianapolis.

On October 3rd, Lynette had additional prescriptions filled. On October 4th, after the adjustment in the dosage by Dr. Hurwitz on September 15th, he requested that they have an INR done within a couple weeks. They did one on October 4th. Lynette took Jessica in for that.

The results of that were 1.7. Very close to the 1.8 target. The decision was made at that time that we shouldn't adjust it further at this point, we should have another INR test in about a week or so. And eight days later, eight days later, Lynette takes Jessica out of school.

She gives a release of documents saying it's for a blood test. She takes Jessica to see Dr. Bartush. Dr. Bartush doesn't do a blood test for reasons that are unexplained. He does, however, at Lynette's request, renew prescriptions. And he gives prescriptions at that time not for 2.5 milligrams of warfarin or Coumadin and not for the new 3.0. He gives prescriptions totaling 7.0 milligrams, more than doubling the dosage.

Why he does that is unexplained. He doesn't put it in his file, but we have the actual prescriptions that he wrote and signed that day. More than doubling her dosage. And he did not order any INRs.

The next day, Lynette fills the prescriptions that she receives from him. By the way, in addition to the prescriptions for warfarin -- Historically Jessica has been treated with three prescriptions. She's been treated with a warfarin prescription, a digoxin prescription, and a Dilantin prescription.

The digoxin is another prescription for the heart to help the heart work better at a better rhythm; and Dilantin is the prescription she was receiving prior to October 12th for treatment of her seizures.

But when Lynette asked Dr. Bartush to renew or refill her prescriptions, he does not renew the Dilantin prescriptions. He gives the two prescriptions for warfarin and the one prescription for digoxin. She walks out with three prescriptions, which she then takes to the drugstore and gets filled. But she now has no prescription for Dilantin. She now has more than a doubling of the dosage of warfarin. That's not realized by anybody at that time.

What is -- What happens, though, is that, after all of these events, and after Lynette refills the prescriptions given to her by the doctor on October 13th and November 18th, on December 5th, the DCS had learned that the concerns were unjustified. DCS did what's called a substantiation.

When DCS receives a complaint of child abuse or neglect, they have a responsibility to either substantiate or

unsubstantiate. If they find that the evidence by a preponderance of the evidence shows child abuse or neglect, they are to substantiate. If it doesn't, they are to unsubstantiate.

They decided on December 5, 2005, to substantiate medical neglect in the face of all this history that you see in front of you. And after Roman has complained to the legislator and the Governor and the others about the rudeness and the manner in which they dealt with this.

They don't, however, inform Roman or Lynette that they are substantiating medical neglect. They're certainly going into the records and the child abuse index or registry as child -- as abusers or neglectors of Jessica based on their finding of neglect.

And I did think it's important to note that, when I -- as I note in that part of the -- It says Judge unsubstantiates later. I'm going to talk a little bit more about some of the proceedings that came later in this process when the events got even more serious.

But this finding of substantiation of medical neglect finally got reviewed by a Judge several years later, and he ruled that it should be unsubstantiated because there was no basis in fact or law to support the substantiation at that time.

When I say law, we're going to be talking a lot about

child abuse and child neglect, and the Judge is going to give you the law on that. You may see some portions of the welfare manual or the manual that DCS uses as to their operating definition for child abuse. It is when a child's physical or mental health is seriously in danger due to injury by the act or omission of the child's parents.

You've got to have physical health seriously endangered due to injury or act or omission. That's child abuse. Child neglect, by their own definition, is when a child's physical or mental condition is seriously impaired or seriously endangered as a result of the neglect of the child's parent, guardian, or custodian to supply the child with necessary food, shelter, or medical care.

In this instance, they were substantiating what they said was necessary medical care which seriously endangered the child. And what they said was that DCS wasn't needed to get to their checkups in all the prior years or the thousand pages before, DCS was needed in order to make sure this happened in 2005. But that, however, as I've told you, was unsubstantiated later.

What occurred then -- That's really just the prologue to the more serious stuff that came immediately thereafter. And actually, it started the same day on that December 5th, 2005. At the request of the school, Jessica had some -- two additional vaccinations. They were done at the -- in Winamac

at the Department of Public Health.

A few days later, Jessica started feeling badly. And on December 12th, she missed school with essentially flu-like symptoms. She was having vomiting and diarrhea and wasn't feeling good.

And so the next day after she stayed home from school the first day of December 12th, on December 13th, Lynette took her to see the family doctor, Dr. Bartush, in Winamac. He examined her for the flu-like symptoms, and he prescribed a liquid diet for her to address that.

He also found that he thought she had thrush, which was kind of a film he observed within her mouth and he prescribed an antibiotic for that, treatment for that.

And the next day, Lynette had that prescription filled in Francesville. Over that week of December -- December 12th was a Monday, Jessica stayed home from school with those symptoms. And she had one other thing going on. That week was the week that she started her first period, and she was having cramps and bleeding as a result of that.

And the bleeding, as you know, I told you that we had those prescriptions significantly increasing the warfarin. May well have been affected by that. But she stays at home. She's got the cramps. The vomiting tends to go down with the liquid diet, et cetera. But she's not -- she seems to be somewhat better, but she starts developing a little -- seems like she's

bit her lip, and she's picking at a scab there, and there's blood arising at times on her lip at that point.

But on Monday, December 19th, after she's been at home for about a week -- By the way, when Dr. Bartush saw her on December 13th with the flu-like symptoms, et cetera, he basically said, if she's not doing better in about a week, you know, come back. And a week after that would have been the next day, December 20th.

On December 19th, Lynette talks to Roman about Jessica still not healing completely and says, "Look, if she's not better by the next day Roman was off, which was December 21st, we'll go to Riley and see what's going on there."

Unfortunately, that never happened because, on December 20th, 2005, after the kids went -- the other three kids went off to school and Jessica appeared to be sleeping fine that morning, that afternoon, about 2:00, Lynette walked into her room and found her lying on the floor on her stomach and tried to -- to arouse her, but failed to do so. She screamed for Roman. He came into the room. He's a CPR instructor. He tried to do CPR while Lynette made a 911 call, hysterical to seek help. An ambulance came. The police came. The deputy coroner came to the scene. But Jessica had died. And that death was then and remains now a heart-wrenching experience for every family member.

And this case is not about what caused her death, because these Defendants are not in any way responsible for causing her death, but what they proceeded to do after Jessica died was to make this tragedy far worse in every way.

However, there are other professionals who came, were involved in considering what the circumstances were. One of the first professionals that was involved at that point was a doctor in the emergency room at the hospital in Rensselaer in Jasper County where she was taken. He examined Jessica. He called Dr. Hurwitz in Indianapolis to find out what Jessica's situation was. Based on what he knew at the time, he believed and his diagnosis was in his report, which you'll see, sudden death syndrome, congenital heart disease. He also provided and indicated there were no indication here of any abuse or neglect.

There were police at the scene. They investigated, as well. They found no bruises indicative of a beating or anything like that. They found no indication of abuse or neglect.

The coroner came to the scene. He, likewise, saw no evidence of child abuse or neglect. And the next -- well, actually that day, DCS decided to go ahead and start taking action.

They didn't initiate this action on their own. The police, who were at the scene were there when the other

children arrived home from school. And the police called DCS to have them come take care of the children because at that point the parents were away at the hospital.

And so they took the children to DCS, but didn't just take them. They detained them for about four-and-a-half hours and questioned them at some length about what was going on in the home at the time, about what Jessica was feeling and doing, and they got tape-recorded statements at that time, not the highest quality, of what the other children observed and saw. Nothing indicated abuse or neglect from the other three children that they tape-recorded and interviewed during that four and a half hour detention on the day that Jessica died.

The next day, an autopsy was done at the request of the coroner to try to determine exactly what was the cause of Jessica's death. The person who performed the autopsy was a Dr. John Cavanaugh, a forensic pathologist. He did a handwritten preliminary report. In his preliminary report, he noted Jessica had numerous hemorrhages at various points in her body, hemorrhages that indicated to him as he wrote on the report that she had a coagulopathy, that the coagulation of her blood was not correct, she was not -- her blood wasn't clotting like it was supposed to, that's why there was a variety of internal hemorrhages going on.

He also said that -- he saw what was a bleeding inside the skull, a subdural hematoma. And he said what he saw

with respect to the subdural hematoma in his report was consistent with a fall. As a forensic pathologist, he's familiar with the fact when you have people on warfarin on Coumadin and they fall, they could have a subdural hematoma because their coagulation isn't the same, and that can contribute to or cause death.

So he identified that. He identified the circumstances. He said in his initial handwritten report this is consistent with a fall. And then in talking with the other people at the autopsy, the police, the coroner, the deputy coroner.

They looked at the body and they said, well, there's some old bruises on the legs, the kind you would expect from a 14-year-old teenager, nothing recent, very small, very insignificant. There were no bruises on the upper body or on the face or on the head which would indicate a beating of any kind. They all agreed, every one of those professionals, agreed that there was no evidence of foul play.

But that's not what DCS thought. They already substantiated medical neglect, right? And they proceeded to investigate over the next several months.

By the way, they questioned Roman and Lynette on the day of her death. They got that indication. They proceeded to do investigations. About a few months later, Regina McAninch sought to get records of the Indiana State Police from an

Indiana State Trooper by the name of Duane Datzman. He had come to the scene in order to take photographs and do some of the death scene work.

And when Regina McAninch was asking Datzman for their medical records, they had a conversation which went something like this. Datzman didn't understand why they were doing this investigation, saying the pathologist stated she died of natural causes. And Ms. McAninch said, "Well, we had a previous medical neglect on this family, and we have a duty to investigate."

And Trooper Datzman responded, "I don't know why you're doing this. Whatever." He gave them their report, and she took it, and she got a supplemental -- or an interim report, if you will, from Dr. Cavanaugh that was dated in May, where he talked about some of the circumstances associated with this death in more detail than in the preliminary report.

And then in October, the Defendants, McAninch and Myers, arranged to hire the Defendant Antoinette Laskey to review the records and see what she thought based on the records, and Dr. Laskey did that.

She reviewed the records that were sent to her by DCS. She talked in the hallway about five minutes to Dr. Hurwitz. She reviewed what the pathologist had said in his interim report, but she didn't call the pathologist. She spent a total of about three hours, roughly three hours in his words,

reviewing the records.

She wrote a three-page, single-spaced report concluding with this statement. "It is my expert medical opinion that this child sustained a fatal beating on the day that she died and that this beating was the direct cause of her death. I have grave concerns about the safety of other children in the care of the caregivers at the time of these injuries."

She sent that to Ms. McAninch and Ms. Myers on October 31st. Ms. McAninch said in an e-mail about the same time, "Thank Heaven someone other than the local director and FCM agree this child died from physical abuse."

That's October 31. Thank Heaven -- This is now ten months after the death. The only people who think there's physical abuse going on here is Ms. McAninch, Ms. Myers, and now they've got a pediatrician to sign onto that, who doesn't consult with the pathologist and who renders this opinion after three hours of work.

So what do they do? Well, the next thing they do is they seize the girls. The very next day after getting Dr. Laskey's report, they come and take Tabitha and Katelynn and take them off not to relatives, but to a foster home out of the county, out of school, away from their homes, away from their families, away from their friends, seizing them.

Why do they do it? Ms. McAninch says she does it --

obviously she says because she's initiated this in part, but she says she's been directed to do this by her director, Ms. Myers.

Ms. Myers, when asked about it, says that she does it because the removal was ordered by the Defendant, James Payne, the Director of DCS.

Ms. McAninch then two days later tells a Judge why -- when asked, "Why are you detaining the children," she says because of Dr. Laskey's report about the fatal beating and grave risk of the children and quote, "to continue our investigation," end quote.

They wanted to question Tabitha and Katelynn further, and they proceeded over the next several months to do that. After putting the girls in foster care, they did something that I think is fairly characterized as investigative therapy. They used the counselors or the therapists for the children to ask questions about their sister's death for investigative purposes.

The result was uncontrolled stress by the children. The result was, to make matters worse, neither of the girls ever said anything that in any way indicated there was abuse or neglect here in any meaningful way.

But once the girls got seized, Roman started to, "What's going on here?" We got a doctor saying that there's been a fatal beating on the day of death. He starts to try to

figure out what is going on here.

And he finds an attorney in Seattle by the name of Heather Kirkwood who does work of this kind for other people, and she says, "Well, have you checked the pharmacy records?" And he goes and gets the records at the Fagen Pharmacy there in Francesville near their home, and that's when he finds that the pharmacy records show that the prescriptions that have been filled are for warfarin that's substantially greater than it had been before. They also show that these had been refilled and that for about two months she's been on an overdose of warfarin.

That wasn't known to DCS before they -- Their extensive investigation didn't go so far as to get the pharmacy records of the meds that she was on that might relate to hemorrhages.

But within a couple weeks after the girls are taken, the pharmacy records are obtained. They show what appears to be a prescription error and an overdose of warfarin, that that explains it, and they proceed to provide that information on December 13th to DCS.

And Dr. Laskey receives that information on December 18th. Dr. Laskey has assumed that Jessica has been on her same dosage of -- the dosage that Dr. Hurwitz had ordered back in September of 3.0. But now the records show it's more than double that, and apparently without any reason and without

any INR testing going on.

But that doesn't seem to dissuade DCS or the Defendants or Dr. Laskey. So more information is gathered.

Roman and others find out that there's an expert on medical errors, on pharmaceutical errors, who teaches in the pharmacy department at the University of Illinois, Professor Bruce Lambert.

They ask him to take a look at it. He examines it. He does a declaration which is provided to DCS on January 4th or shortly thereafter -- that's when the declaration is dated -- in which he explains, among other things, that warfarin overdose is a potential cause of this death that you should be considering now that we've got this evidence.

They also obtain a declaration from a Dr. Innis. Dr. Innis is a hematologist. That's a doctor who specializes in blood issues, including coagulation issues. Dr. Michael Innis is based in Australia. He does a declaration that explains, in his opinion based upon the records that he's reviewing now, that to a reasonable degree of medical certainty, Jessica's death was the result of an undetected complication of Coumadin therapy.

By the way, these experts are doing this work on a pro bono basis. They're not saying it because some lawyer is buying them. They're saying it because they're looking at the records, and that's the conclusion they're reaching. It's

being shared with DCS, but it doesn't dissuade them.

And then we've got some other things going on about this time. One of the things that happens -- I didn't note on November 1st, after Dr. Laskey sends her report on October 31, in addition to seizing the girls, they convince the State Police to start an investigation.

They've closed their files a long time ago, but now we've got this report from Dr. Laskey, and they assign a relatively new detective. Been in the business, doing this work for about a year by the name of Jennifer McDonald. She is here as a defendant. She begins her investigation on November 1st.

And on January 15th, as part of her investigation, she conducts a search of the Finnegan home to get a table in order to match what she sees as interior bruising or bleeding inside Jessica's head. You will hear evidence that the whole idea is ridiculous, but that search was done at her instigation on that day.

Also at her instigation, there was a search done on January 25th. Jessica's body was exhumed, pulled out of the ground, for a second autopsy.

Detective McDonald had seen a presentation by a world famous pathologist, Dr. Michael Baden, and he offered to come out and help State Police do investigations, and she contacted him. He agreed to come out and do an autopsy of Jessica's

body, and he did that on January 25th. The results of his autopsy were, in essence, no significant findings. That's what the coroner reported when he issued his report not long -- well, later that year. This is now 2007.

But McDonald is not only doing searches of the home and exhuming the body and having autopsies done. She also is interviewing the children, and on January 29th, she does an interview of Johnathon, the older brother.

And in this interview of Johnathon, she takes significant liberties with the truth. She thinks this is an appropriate investigation tactic, to talk to the child of Lynette and Roman.

And she tells Johnathon, who at this point is about 18, tells Johnathon that his mother, Lynette, has accused him of causing Jessica's death, of killing Jessica. Lynette and Roman never said anything of the sort, but she thought she could get Johnathon to turn on his parents by telling him that lie.

Johnathon didn't turn on them in any way, but he did -- he did call his parents after that interview, when the State Police is telling him that they've accused him of killing his sister.

He is almost hysterical himself. He's upset that they would do such a thing. He doesn't want to ever see them again. And the relationship between Johnathon and his parents

for the next several years is either non-existent or extremely strained as a result of the lie told by Jennifer McDonald. She thinks it's okay to kind of stretch the truth, if you will, in order to serve the greater mission of her criminal investigations.

While Jeanette -- excuse me, Jennifer McDonald is carrying on her investigation in those fashions, Roman and Heather Kirkwood are continuing to try to gather evidence that would be pertinent to this matter.

In fact, Heather Kirkwood creates three volumes of information, three large binders, over 800 pages of material, including all the medical records of Jessica, all the medical literature that tends to confirm exactly what appears to be going on here, which is a warfarin overdose, and how it manifests itself and results in -- may well result in a fall that causes death. And then she also provides these expert opinions, in the binders, from Dr. Lambert and Dr. Innis as well as a number of other declarations which you will see in this case, but significant material provided to DCS on or about March 1, 2007. They ignore it. They don't care what the facts are.

On March 23, three weeks after giving this information, after learning about the prescription overdose, after learning about the implications of that, they substantiate death from physical abuse.

They've got the job to substantiate or unsubstantiate. They substantiate there is death here by physical abuse from Lynette and Roman based on that investigation.

This substantiation does not mention the prescription error. It doesn't mention that throughout this time the forensic pathologist who had done the autopsy believed that, to the extent there were injuries, they were all consistent with a fall. Doesn't mention the fact that, when you have a warfarin overdose, the symptoms are very much the flu-like symptoms, not discernible to an ordinary person.

But they did. That's what they substantiated on March 23rd.

On March 17th, there is another report by Detective McDonald, recording some of the things that she finds during her investigation.

She writes this report and destroys all of her notes that she has, a report that was in many respects false. She writes in this report that Tabitha and -- the children say that Jessica had been begging to go to the hospital the night before she died. The children never said that, but it's in her report.

You got the tapes the day -- the day of her death. They never say anything like that. But it's in her report, and her notes are destroyed.

And she writes this report, and then she goes to get arrest warrants. And if things weren't already bad enough, on April 24, 2007, she obtains arrest warrants for Roman and Lynette. They are arrested, and they are jailed on criminal charges. She does the probable cause affidavit based on her investigation.

You're going to hear some of the details about that arrest because Roman and Lynette were supposed to be meeting with a prosecutor that day to kind of explain why there was no basis for this, but instead, they get arrested.

And then they get arraigned in circumstances where Lynette is shackled and is forced to hop upstairs outside the courthouse in an incredibly shameless set of circumstances initiated by Detective McDonald.

And, in fact, the day after this arrest, Detective McDonald issues a news release, and the Indiana State Police do, in which she attributes this result to Dr. Baden's autopsy, when he never does a report and never made any significant findings.

But that's what she does. And it's widely publicized that these two, the parents, are now being accused of responsibility for the death of their daughter.

After that, Roman and Heather and Lynette continue to search for evidence. They talk to Dr. Edith Nutescu, who is an expert on coagulation and anti-coagulation treatment.

She looks at these records. She does a declaration explaining that, when you have warfarin overdose at this level, you are particularly prone to bruising. You're going to have bruises if you're on warfarin, especially if you're on a warfarin overdose. There are no bruises indicative of beating whatsoever. It's completely inconsistent with it, as she makes clear in her declaration. This was a prescription error, and to suggest that there's a beating in these circumstances is just unwarranted.

They also obtain a declaration from a Dr. Heinsen, a family doctor in Winamac, because at this point they're trying to get the children out of foster care. They've been there now for seven months, and he says, "Look, the children are not in danger. I'll make sure they're not in danger if you're concerned about it," but they pay no attention to that.

They obtain a declaration from Dr. Jan Leestma, a neuropathologist in Chicago who looks at all these circumstances, and he says, "Look, this evidence here is death due to warfarin overdose. It's not death due to beating. You're going to have bruising. The circumstances here of the warfarin overdose explain what's going on here."

On June 27th, they learn, after all this evidence has been developed, that Laskey is not going to testify for them any longer. She says, "I really don't know that much about Coumadin or warfarin, and I'm not going to testify for you in

support of this detention of the children or the petition that's been filed for Child in Need of Services."

A declaration is also prepared by Dr. Krupsaw about the damage from -- from the investigation therapy that has been going on for years and how that's unethical for them to be doing that.

There's a declaration by Dr. Pless that's provided. Dr. John Pless is a forensic pathologist who had been at the IU Medical School for a number of years who trained, among others, Dr. Cavanaugh. He looks at the facts and circumstances, and concludes there's no evidence here of beating or abuse.

Dr. Cavanaugh sends an e-mail on July 11th explaining to DCS that there have now been some slides done that show the age of the bleeding that had occurred in the subdural and other parts of the body, and it showed this wasn't a case of bleeding on the day of death. This was a case where bleeding had been occurring over days or weeks as demonstrated by these slides. He also said he had new information with respect to time of death. And after they get that e-mail, they cancel Cavanaugh's deposition.

Now, they will tell you that they did this because Dr. Cavanaugh mentioned in his May 20th report, May of 2006 report, that there was a skull fracture. And there is mention of a skull fracture in that report. They had asked Dr. Cavanaugh, he said it's all consistent with a fall. "I see

a subdural hematoma. I see some other injuries here that reflect a fall, and a skull fracture occurs with a fall, and this is all consistent with a fall." And they say it may not be consistent with a fall from 2 feet rolling off the bed, but it's consistent with a fall. He never suggested there was any abuse, any neglect at any time.

From the point of the initial autopsy, he says it's undetermined in terms of whether this is an accidental death, where somebody tripped and fell or maybe a medication error or whether it was a natural death because she had a seizure; and as a result of the seizure and these other complications, it was a natural death. From day one, his opinion was there's no evidence here of foul play.

Dr. Laskey is interpreting the report as well as the other Defendants without any basis in fact or supported by the actual author of the report.

And by the way, with respect to that skull fracture, there will also be evidence that, at the time of the initial autopsy, everybody in the autopsy room heard a pop as Dr. Cavanaugh was cutting into the skull. They all believed that, to the extent that there were fractures in the skull, it was an artifact of the autopsy at the time.

Dr. Cavanaugh, for him, it never really mattered whether it was an artifact of the autopsy or not because there was no evidence of abuse, the lack of bruising, et cetera.

Never indicated foul play. But when he looked at the skull after he had cut into it, there was a fracture, and so he felt it was his duty to record the fracture. He believed it was an artifact of the autopsy initially.

When Dr. Baden came in and they looked at it a second time, there was some blood inside the fracture, and he thought -- Dr. Baden thought that one of the fractures may have preexisted. Still never thought it was of any consequence because it was all consistent with a fall. It was not consistent with a beating.

They also use the words -- Dr. Cavanaugh used the words blunt force injury of the head, which he will tell you when he testifies that he means simply that, when you have a fall and there's an impact that results in something like a subdural hematoma, you have to have some impact, not a beating, but some sort of impact, like a fall, and that's called blunt force injury.

And he describes the direction of this fall or this injury and the words pile driver force at one time. At the same time he says it's consistent with a fall; it's essentially the body is flowing after the head.

At no time does he suggest that any of the things mean there was anything other than an accidental or natural death. But that's what they are keying on.

At no time does he determine that this is a homicide,

but that's what they, the pediatrician and the DCS workers, conclude, and Detective McDonald pursuing criminal charges.

So on December -- excuse me, July 17th, 2007, the coroner, Gordon Klockow, renders his verdict in this case.

It's his job to determine the cause of death whenever there's a questionable death. He does an extensive report, and he renders a verdict, saying this death was an accidental death due to prescription errors.

In his opinion, to the extent there's a skull fracture, it's an artifact of the first autopsy. He was there. He heard the pop. He sees the evidence.

And by the way, Dr. Leestma and Dr. Pless and others all think it's an artifact of the first autopsy. Dr. Cavanaugh thinks one of them is likely in his opinion to have preexisted, but in his mind it is and never was of any consequence.

But that's his conclusion.

And the next day, there's finally going to be a hearing, a fact-finding hearing as to why the girls are in need of services or not, why they should need to be detained or not.

Roman and Lynette and their attorney, Heather Kirkwood, have gathered 22 witnesses for this hearing. In defense of their position on July 18th, DCS, Ms. Myers, Ms. McAninch, Mr. Payne, for this hearing they have zero witnesses. Zero. But they maintain the substantiation. They keep the girls. Although they do in the course of that week

agree to finally allow the girls to return home.

And on July -- Excuse me, August 9th, 2007, after nine months of being away from their family, away from their home, away from their school, they're finally allowed to return. But they're allowed to return with DCS still requiring what they call a reunification plan.

In this reunification plan, they require an assortment of services DCS provides, an assortment of services that is nothing less than harassment. They have people coming to their home, several people, on a daily basis, up to four hours a day, supposedly to help them. They are not able to return by any means to normal family life because of this reunification harassment by DCS that starts upon their return.

The prosecutor finally comes around and dismisses these charges that Detective McDonald has instigated. On October 24th, she dismisses the charges against Roman. On November 2nd, she dismisses the charges against Lynette.

On November 8th, there is an interesting hearing. There's a motion that -- The coroner has been trying to work with DCS in connection with his investigation. They have not worked in return, and the coroner gets DCS found in contempt for resisting his investigation, to get to the bottom of this, of what caused Jessica's death.

Finally, on November 27th, 2007, after all that, DCS dismisses the CHINS case, acknowledging that there was no basis

for it.

But then, on December 13th, 2007, after all of that evidence, after no evidence to the contrary, they have a procedure called administrative review.

We still have the substantiations from March 23rd, 2007 saying this was death due to child abuse. They still have it. And what they have is an administrative review. They've got an opportunity to ask in this instance Reba James, the manager over Laurel Myers, to review it and reach her own opinion as to whether this should be substantiated. She not only confirms the substantiation. She adds two more charges.

In the next few months, January to April 2008, after having this adverse result from Reba James in the administrative review, Lynette and Roman attempt an administrative appeal. They're still on the registry as child abusers.

And they identify all of the medical experts who are going to testify on their behalf. DCS has none. And there's a decision made at that time that this matter is going to be not handled in the administrative review process but will have a judicial review by an independent Judge in Pulaski County.

And in due course, an 8,000 page record with all this evidence is gathered. They agree that's the record to be considered by Judge Blankenship; and after all of that, on January 28th, 2010, he reviews it. He considers everything

that these Defendants through their attorney have to offer to substantiate these claims, and what he finds is that they should all be unsubstantiated. They should all be unsubstantiated, and these are his words because those findings are arbitrary and capricious. There was no evidence or facts to support them.

So we've asserted civil rights claims. We've asserted civil rights claims under the First Amendment because when Roman sent his letter, his petition to his legislator, to the Governor, to say, look, there's something wrong here, and what he gets in response is substantiated medical neglect, and this course of conduct, that's a retaliatory conduct that violates that amendment.

We've asserted claims here under the Fourth Amendment that say searches have to be reasonable, they have to be based on evidence and fact, and the searches that were conducted here and the seizures that were conducted here, the seizure of the arrest, the false arrest, the seizure of the detention of the girls that extended for nine months, the detention even on the day of the event, the exhumation of Jessica's body, they all violate the Fourth Amendment's prohibition against unreasonable searches and seizures.

Maybe most importantly is the claim under the Fourteenth Amendment. That's the claim that says every parent and every child has a fundamental interest in the companions

and society of the other in these familial relationships, and they cannot be separated by government other than in emergent situations or to protect the child against imminent danger.

This substantive due process, the evidence will show, establishes that is violated by the seizing of Tabitha and Katelynn without probable cause to believe that they were in any danger, detaining them for nine months for purposes of investigative therapy, for providing false reports and concealing exculpatory evidence in order to continue this detention, to tell Johnathon and his sisters that their mother had murdered their sister and to tell Johnathan in particular that his mother was accusing him of killing his sister, and thereby deliberately and systematically destroying family ties and relationships.

You'll hear considerable evidence in this case about the damages that those actions caused to each of these Plaintiffs, and I won't detail them for you now, but you'll hear about them over the next two weeks. And at the end of this case, I will ask you, based on the violations of those civil rights and that course of action, to return a verdict for full and fair compensation for the damages that were done to each member of this family.

And I will also ask you to return a verdict for punitive damages because that's the kind of damages that's available to tell these Defendants and others in similar

positions that this isn't acceptable in Indiana, to give that message by providing a punitive damage, as well. Thank you.

* * *

(WHEREUPON, this concludes the partial transcript in this case on this date.)

CERTIFICATE

I, Angela Phipps, certify that the foregoing is a correct transcript from the excerpt of the record of proceedings in the above-entitled matter.

Date: SEPTEMBER 30, 2015

S/Angela Phipps
S/Angela Phipps
Court Reporter
U.S. District Court